Editor's note: 77 I.D. 172; Appealed – aff'd, sub nom. WJM Mining & Development Co. v. Morton, Civ. No. 70-679 (D. Ariz. Dec. 8, 1971), dismissed, No. 72-1524 (9th Cir. Feb. 4, 1974)

FRANK AND WANITA MELLUZZO, ET AL.

IBLA 70-149 Decided October 7, 1970

Mining Claims: Contests -- Mining Claims: Rules of Practice: Hearings

Where information developed after a Departmental decision holding a mining claim invalid indicates that it may have been based upon inaccurate evidence, the prior decision will be set aside and the case remanded for an administrative review of the patent application in the light of the actual situation.

1 IBLA 37

IBLA 70-149	:	Petition for reconsideration
UNITED STATES	:	Denied in part; allowed in
v.	:	part. Decisions vacated in
FRANK MELLUZZO AND	:	part and case remanded in
WANITA MELLUZZO	:	part.

UNITED STATES
v.
SALVATORE MELLUZZO AND
CONCETTA MELLUZZO

UNITED STATES
v.
W.J.M. MINING & DEVELOPMENT CO., INC.

UNITED STATES
v.
JACK R. CRAM, LYNN CRAM, HAZEN CRAM,
JAMES CRAM, JR. AND CRAM, INCORPORATED

PETITION FOR RECONSIDERATION

Frank and Wanita Melluzzo and Salvatore and Concetta Melluzzo, for themselves, and Tognoni and Pugh, Attorneys-at-Law, for all other contestees have filed separate petitions for reconsideration of departmental decision United States v. Frank and Wanita Melluzzo, et al., 76 I.D. 181 (1969). 1/

The Melluzzo petition asks reconsideration of the decision only as to the three claims known as the North 7th Street Group, that is the Concetta, the Nita Jean and Nita Jean No. 2. The other petition asks reconsideration of the decision as to the claims constituting the Enterprise & Cram Groups (the latter being completely overlapped by the Enterprise claims).

1/ Frank Melluzzo has notified the Department informally that he and the other Melluzzos are no longer represented by Tognoni and Pugh in this proceeding.

The Enterprise & Cram petition has been carefully examined. It raises only general objections to the decision, asserting that it is mistaken in its interpretation of the evidence and the law. A similar petition for all the claims was denied by the Acting Solicitor in a letter dated February 3, 1970. We find nothing in the recent petition which would warrant a change in our decision as to the Enterprise & Cram claims. Therefore, the request is denied and the decision of July 29, 1969, will remain the final Departmental action in the matter as to them.

The Melluzzo petition is much more explicit. It is supported by statements of present and former personnel of the Bureau of Land Management and of Frank Melluzzo saying that the evidence presented at the hearing in the contests involving the North 7th Street Group did not describe accurately the amount of building stone removed from the claims or sold under firm contract, and later removed, prior to July 23, 1955, and that such amount is substantially more than that found by the hearing examiner and accepted upon appeal.

Pursuant to directions from the Solicitor's office, officials of the Phoenix land office conducted an investigation of the three claims in the North 7th Street Group. Their investigation included an examination of various buildings erected in the period from 1951 - 1955 on which stone from the claims was used. The results of the investigation are set out in a stipulation signed by Frank and Wanita Melluzzo and the Acting Arizona State Director, BLM. It concludes that the production from the North 7th Street Group in 1954 was 298 tons, grossing $3526.00, and in 1955, 580 tons, grossing $8700.00.

While these total figures are substantially in excess of those found by the hearing examiner and accepted by the Department, as presented they do not provide a basis for redetermining the validity of each particular claim. The validity of each of the claims, all else being regular, must rest upon the sales and production it alone yielded. When the figures are offered only as a total for a group of claims, it is not possible to determine the validity of any particular claim, for all or none of the production could have come from it.

In our request for further information, we had asked that the Melluzzos sign a stipulation setting out, as to each claim, the amount produced and sold by them prior to July 23, 1955. We intended, by having statistics on which the United States and the claimants agreed, to put an end, if possible, to the confusion that has arisen from the vagueness and conflicts in Frank Melluzzo's testimony in this and other proceedings. The stipulation as presented is of little help, for it not only leaves uncertain the Melluzzo position as to these individual claims, but scarcely inhibits the use of some "floating" production in other contests.

There is, however, some indication of how the production was distributed among the three claims. The Chief, Branch of Minerals, Phoenix Land Office, who took part in the investigation, has submitted some comments on this point. Of the stone he observed in the various buildings he estimated that 2/3 came from the quarries on the Nita Jean No. 2, 1/3 from those on the north end of the Nita Jean and none came from the Concetta. He also observed no opened quarries on the Concetta.

While mining contests, in which a hearing has been held, are to be determined only on the basis of the record made at the hearing, 43 CFR 1840.0-8 (1970), we are now examining only a petition for reconsideration. The petition is addressed to the discretion of the Secretary. In considering it he (or his delegate) is not bound by the same rules as those governing the decision on appeal. Therefore, the comments of the Chief, Branch of Minerals, may be used to evaluate the general statements in the stipulation in deciding whether the petition should be allowed. His remarks on the Concetta reinforces the conclusion reached in the Department's decision that it was properly found to be invalid. We see no reason to disturb the decision as to that claim, and the petition as to it is denied.

While the above observations suggest that the other two claims may be valid in whole or in part, the record before us, that is the record at the hearing even as amplified by the stipulation, affords no basis for making such a determination. As we have said, each claim must be adjudicated on the basis of the facts pertaining to it.

The land office has investigated the claims and perhaps has or can obtain the facts as to each claim. Instead of trying to prepare a more satisfactory stipulation covering the precise situation as to each claim, we believe it would be more practical in the circumstance for the land office to review the validity of the Nita Jean and Nita Jean No. 2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5, 35 F.R. 12081), the Department's decision of July 29, 1969, and the decisions of the Bureau of Land Management and the hearing examiner as to these two claims are set aside and the case is remanded for further proceedings consistent herewith.

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Martin Ritvo, Member

I concur: I concur:

_____ _____
Edward W. Stuebing, Member Newton Frishberg, Chairman